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09/774,458	01/31/2001	Fred J. Zustak	SNY-P4143	3440

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MILLER PATENT SERVICES
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EXAMINER

BELIVEAU, SCOTT E

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/774,458

Applicant(s)

ZUSTAK ET AL.

Examiner

Scott Beliveau

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings received on 01 March 2004 are approved in light of applicant's amendments to the specification.

Response to Arguments

2. Applicant's arguments with respect to claims 1, 9, 10, and 18 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., distinctions 2-4) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As to applicant's traversal of the OFFICIAL NOTICE that it is notoriously well known in the art of video distribution to "provide the encryption key to the class of subscribers" who are authorized to view requested content, the examiner is confused as to why applicant would be unaware of such being known in the art given that evidence supporting the fact was previously provided in the record in the form of the prior art Maruo et al. reference (US Pat No. 6,757,909) which was also incorporated by reference in its entirety in the instant application and should have been reviewed by applicant given that it is a portion of the application as originally filled. The newly cited Mittra reference (US Pat No. 5,748,736) (the Mittra reference was noted in the prior office action, but was not listed on the PTO-892) also

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explicitly supports the particular usage encryption keys distributed to groups of such in connection with multicast groups. However, after careful re-consideration of the applied Novak reference, it examiner's opinion that such would need to be an inherent feature of the Novak reference otherwise the end-user receiving a symmetric key or public-private key encrypted program would never be able to view the programming content in an unscrambled format.

Claim Objections

3. Claims 9, 12, and 18 are objected to because the limitation of "providing the encryption key to the class of subscribers" appears to be more accurately worded as "providing the decryption key to the class of subscribers" in view of the phraseology of the specification (IA: Page 15, Line 30 – Page 16, Line 10).
4. Claim 9 is objected to because the term "tevision servie provider headend" should read "television service provider headend". Appropriate correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novak (US Pub No. 2002/0104099 A1) in view Boyer (US Pub No. 2003/0066085 A1).

In consideration of claim 1, the Novak reference discloses a “method of providing a channel of television programming to a class of subscribers” (Abstract). The method comprises a web-site locatable at any suitable server (Para. [0040] which may be part of an interactive television system (Para. [0025]) “receiving programming content from a first subscriber” wherein “the programming content” is “transmitted electronically from the first subscriber . . . via a first subscriber's set-top box” [122] (Para. [0056], [0061], and [0078]). The received programming content is subsequently “multicast” from the web-site or cable provider (Para. [0033], [0035], [0060], and [0084]) to the “class of subscribers” such as those belonging to a class of people with a common interest for the delivery of the uploaded material such that the “multicasting is carried out by addressing a set-top box corresponding to each subscriber belonging to the class of subscribers” or group of subscribers interested in the material with information necessary to access the material (Figure 11; Para. [0080] – [0082], [0084], and [0089]). As aforementioned, the Novak reference discloses that the particular web site [124] may be located any suitable server accessible via the internet (Para.

[0040]), however, the reference does not explicitly disclose nor preclude that the web-site server does not reside at a “television service provider headend”.

Figure 3 of the Boyer et al. reference provides evidence that it is common knowledge for a “television service provider headend” [88] to comprise a server for a web-site.

Accordingly, it would have been obvious to one having ordinary skill in the art to modify the Novak reference such that the web-site server resides at a “television service provider headend” such that media to/from the subscriber web-site are being distributed “at television service provider” for the inherent advantages associated with such including but not limited to providing an efficient means to distribute Internet based content based upon the relative proximity between the subscriber and the cable headend.

Claims 2-4 are rejected wherein the “programming content is received from the first subscriber by an upload to the service provider headend via a dial-up narrowband telephone communication link” or “via a wideband telephone communication link”, or “via a cable modem communication link” (Novak: Para. [0030]).

Claim 5 is rejected wherein the “multicasting comprises multicasting the programming content over a leased digital television channel” or PPV channel (Novak: Para. [0081]).

In consideration of claim 6, the Novak reference discloses that the “multicasting is carried out by: encrypting the programming content using an encryption key . . . and broadcasting the encrypted programming content to the class of subscribers” (Para. [0082]). The reference, however, does not explicitly set forth “providing the encryption key to the class of subscribers”. However, this limitation is believed to be implicit to the reference as the distributed encrypted content would require a means of “providing the encryption key”

associated with decrypting the content such that the provide a means by which the distributed encrypted content is decrypted/unscrambled for viewing based upon symmetric and/or public-private keys encryption/decryption techniques.

Claim 7 is rejected wherein the “class of subscribers comprise one of a family, affiliates of a corporate entity, and people with a common interest” (Novak: Para. [0026], [0058], [0070], and [0080]).

Claim 8 is rejected wherein “the programming content is received from the first subscriber by an upload to the service provider headend of content from one of a still camera, a video camera, a video tape player, an audio tape player, a CD player, a PVR and a scanner” (Novak: Para. [0039] and [0061]).

Claim 9 is rejected as aforementioned, wherein the Novak reference discloses a “method of providing a channel of television programming to a class of subscribers” (Abstract), wherein “the class of subscribers comprise one of a family, affiliates of a corporate entity, and people with a common interest, the method comprising in combination” (Para. [0026], [0058], [0070], and [0080]). The method comprises a web-site locatable at any suitable server (Para. [0040]) which may be part of an interactive television system (Para. [0025]) that “receives programming content from a first subscriber” wherein “the programming content” is “transmitted electronically from the first subscriber. . . via a first subscriber's set-top box” [122] (Para. [0056], [0061], and [0078]) though “an upload . . . via one of a dial-up narrowband telephone communication link, a wideband telephone communication link and a cable modem communication link” (Para. [0030]). The received programming content is subsequently “multicast” (Para. [0060] and [0084]) from the web-site or cable provider (Para.

[0033], [0035], [0060], and [0084]) “over a leased digital television channel” (Para. [0081] and [0089]) to the “class of subscribers” such as those belonging to a class of people with a common interest for the delivery of the uploaded material such that the “multicasting is carried out by addressing a set-top box corresponding to each subscriber belonging to the class of subscribers” or group of subscribers interested in the material with information necessary to access the material (Figure 11; Para. [0080] – [0082], [0084], and [0089]).

While the reference discloses that the “multicasting is carried out by: encrypting the programming content using an encryption key . . . and broadcasting the encrypted programming content to the class of subscribers” (Para. [0082]). The reference, however, does not explicitly set forth “providing the encryption key to the class of subscribers”. However, this limitation is believed to be implicit to the reference as the distributed encrypted content would require a means of “providing the encryption key” associated with decrypting the content such that the provide a means by which the distributed encrypted content is decrypted/unscrambled for viewing based upon symmetric and/or public-private keys encryption/decryption techniques.

With respect to the particular limitation such that the programming content is uploaded/downloaded from the “television service provider headend”, as aforementioned, the Novak reference discloses that the particular web site [124] may be located any suitable server accessible via the internet (Para. [0040]), however, the reference does not explicitly disclose nor preclude that the web-site server does not reside at a “television service provider headend”. Figure 3 of the Boyer et al. reference provides evidence that it is common knowledge for a “television service provider headend” [88] to comprise a server for a web-

site. Accordingly, it would have been obvious to one having ordinary skill in the art to modify the Novak reference such that the web-site server resides at a “television service provider headend” such that media to/from the subscriber web-site are being distributed “at television service provider” for the inherent advantages associated with such including but not limited to providing an efficient means to distribute Internet based content based upon the relative proximity between the subscriber and the cable headend.

In consideration of claims 10 and 11, the Novak reference discloses a “method of providing a channel of television programming to a class of subscribers” (Abstract). The method comprises “establishing the class of subscribers” (Para. [0058]) whereby those subscribers may “lease a television channel from a television service provider” (Para. [0081]) in order to access uploaded or “electronically transmitted programming content from a first subscriber to the service provider . . . from the first subscriber’s set-top box” (Para. [0056], [0061], and [0078]). Once uploaded, the “first subscriber being one of the class of subscribers” (ex. family member) “schedules playback of the programming content” (Figures 6-7; Para. [0062] – [0067]) whereupon it is subsequently “multicast . . . over the leased television channel to the class of subscribers” such that the “multicasting is carried out by addressing a set-top box corresponding to each subscriber belonging to the class of subscribers” or group of subscribers interested in the material with information necessary to access the material (Figure 11; Para. [0080] – [0082], [0084], and [0089]).

As aforementioned, the Novak reference is not limiting with respect to the location of the upload web-site such that the web-site server does not reside at a “television service provider headend”. Figure 3 of the Boyer et al. reference provides evidence that it is common

knowledge for a “service provider headend” [88] to comprise a server for a web-site.

Accordingly, it would have been obvious to one having ordinary skill in the art to modify the Novak reference such that the web-site server resides at a “television service provider headend” such that media to/from the subscriber web-site is distributed to/from the “service provider headend” for the inherent advantages associated with such including but not limited to providing an efficient means to distribute Internet based content based upon the relative proximity between the subscriber and the cable headend.

In consideration of claim 12, as aforementioned, the Novak reference discloses that the “multicasting is carried out by: encrypting the programming content using an encryption key . . . and broadcasting the encrypted programming content to the class of subscribers” (Para. [0082]). The reference, however, does not explicitly set forth “providing the encryption key to the class of subscribers”. However, this limitation is believed to be implicit to the reference as the distributed encrypted content would require a means of “providing the encryption key” associated with decrypting the content such that the provide a means by which the distributed encrypted content is decrypted/unscrambled for viewing based upon symmetric and/or public-private keys encryption/decryption techniques.

Claim 13 is rejected wherein the “television channel comprises a digital television channel” associated with an IP broadcast (Novak: Para. [0069] and [0089]).

Claim 14 is rejected wherein the “programming content is received from the first subscriber by an upload to a service provider headend via one of a dial-up narrowband telephone communication link, a via a wideband telephone communication link and a cable modem communication link” (Novak: Para. [0030]).

Claim 15 is rejected wherein “the programming content is received from the first subscriber by an upload to the service provider headend of content from one of a still camera, a video camera, a video tape player, an audio tape player, a CD player, a PVR and a scanner” (Novak: Para. [0039] and [0061]).

In consideration of claim 16, the Novak reference discloses the particular usage of an “arbiter” (Figure 7) further operable to “removing the programming content by: requesting a schedule arbiter to remove the content and the schedule arbiter removing the content” (Para. [0065]) so as to ensure that multiple programs are not scheduled for the same time slot.

Claim 17 is rejected wherein the “scheduling is carried out by a schedule arbiter” (Novak: Para. [0066]).

Claim 18 is rejected as aforementioned, wherein the Novak reference discloses a “method of providing a channel of television programming to a class of subscribers” (Abstract), wherein “the class of subscribers comprise one of a family, affiliates of a corporate entity, and people with a common interest, the method comprising in combination” (Para. [0026], [0058], [0070], and [0080]). The method comprises “receiving programming content from a first subscriber” wherein “the programming content” is “transmitted electronically from the first subscriber . . . via a first subscriber's set-top box” [122] (Para. [0056], [0061], and [0078]) though “one of a dial-up narrowband telephone communication link, a wideband telephone communication link and a cable modem communication link” (Para. [0030]). Once uploaded, the “first subscriber being one of the class of subscribers” (ex. family member) uses a “schedule arbiter to schedule playback of the programming content” (Figures 6-7; Para. [0062] – [0067]) and to “remove the programming content by: requesting a

schedule arbiter to remove the content and the schedule arbiter removing the content” (Para. [0065]) so as to ensure that multiple programs are not scheduled for the same time slot. Once the schedule has been established, the “programming content” initially received by the “set-top box” [122] from “one of a still camera, a video camera, a video tape player, an audio tape player, a CD players, a PVR and a scanner” (Para. [0039] and [0061]), is subsequently “multicast . . . over the leased television channel to the class of subscribers” by “addressing a set-top box corresponding to each subscriber belonging to the class of subscribers for transmission of the content” (Figure 11; Para. [0060], [0080] – [0082], [0084], and [0089]).

While the Novak reference discloses that the “multicasting is carried out by: encrypting the programming content using an encryption key . . . and broadcasting the encrypted programming content to the class of subscribers” (Para. [0082]). The reference, however, does not explicitly set forth “providing the encryption key to the class of subscribers”. However, this limitation is believed to be implicit to the reference as the distributed encrypted content would require a means of “providing the encryption key” associated with decrypting the content such that the provide a means by which the distributed encrypted content is decrypted/unscrambled for viewing based upon symmetric and/or public-private keys encryption/decryption techniques.

With respect to the particular limitation such that the programming content is uploaded/downloaded from the “television service provider headend”, as aforementioned, the Novak reference discloses that the particular web site [124] may be located any suitable server accessible via the internet (Para. [0040]), however, the reference does not explicitly disclose nor preclude that the web-site server does not reside at a “television service provider

headend". Figure 3 of the Boyer et al. reference provides evidence that it is common knowledge for a "television service provider headend" [88] to comprise a server for a web-site. Accordingly, it would have been obvious to one having ordinary skill in the art to modify the Novak reference such that the web-site server resides at a "television service provider headend" such that media to/from the subscriber web-site are being distributed "at television service provider" for the inherent advantages associated with such including but not limited to providing an efficient means to distribute Internet based content based upon the relative proximity between the subscriber and the cable headend.

Claim 19 is rejected in view of the combined references wherein the "programming content is stored on a server" or web-server that "resides at the service provider headend" (Boyer et al.: Figure 3).

Claim 20 is rejected in view of the combined references wherein the "programming content is stored on a server" or web-server that "resides at the service provider headend" (Boyer et al.: Figure 3). As set forth in the Novak reference, the "server" associated with the web-site is "designated for storage of content for broadcast over leased television channels" of the cable provider (Novak: Para. [0079], [0081], [0085], and [0086]).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as follows. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objections made.

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- The Mittra (US Pat No. 5,748,736) reference discloses a system and method for secure group communication via a multicast environment wherein encryption/decryption key information is exchanged so as to allow access to material by group members.
- The Thomas et al. (US Pub No. 2002/0059621 A1) reference discloses a system and method whereby user's may upload content to the headend for subsequent distribution to selected subscribers.
- The Ellis et al. (US Pat No. 2003/0149988 A1) reference discloses an interactive program guide that further supports remote storage and retrieval of programming.
- The Ellis et al. (US Pat No. 6,774,926) reference discloses a system and method for uploading video to a headend for subsequent redistribution to interested parties in the form of a personal channel.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 571-272-7343.

The examiner can normally be reached on Monday-Friday from 8:30 a.m. - 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEB
March 18, 2005


JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600